

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE J. KONCELIK, JR.,)
)
)
Plaintiff,) Civil Action No. 08-C-623
)
)
v.) Judge: Bucklo
) Magistrate Judge: Nolan
JARDEN CORPORATION,)
)
)
Defendant.)

REPORT OF PARTIES' PLANNING MEETING

1. MEETING.

Pursuant to Fed.R.Civ.P. 26(f), a meeting was held during the period from April 23, 2008 to May 6, 2008 via written correspondence and was attended by:

Geoffrey A. Baker and Christopher E. Haigh for Plaintiff Lawrence J. Koncelik, Jr.

Michael R. Annis, Esq. for Defendant Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions (“Sunbeam”)

2. PRE-TRIAL SCHEDULE.

The parties jointly propose to the Court the following discovery plan:

A. Discovery will be needed on the following subjects:

- The skill level of the “person having ordinary skill in the art” (PHOSITA) to which the patent-in-suit is directed.
- Whether or not Defendant’s products infringe any valid claim of the patent-in-suit.
- Whether the claims of the patent-in-suit were anticipated by the prior art.
- Whether the claims of the patent-in-suit would have been obvious to PHOSITA in light of the prior art.
- If the alleged claims of the patent-in-suit are “obvious” under 35 U.S.C. § 103, whether any of the “secondary considerations” of *Graham v. John Deere* apply and, if so, whether the same override said obviousness.

- Whether Plaintiff is entitled to any damages and, if so, the amount and extent of damages.
 - If damages are appropriate, the appropriate methodology for calculating damages.
 - Whether damages for Defendant's alleged infringement should be enhanced.
 - Whether Plaintiff is entitled to any remedy in this matter.
 - Whether the patent-in-suit is enforceable.
 - The proper construction or definition of words and/or terms used by the patentee in the asserted claims of the patent-in-suit.
 - Whether Sunbeam's alleged infringement is willful.
 - Whether this is an exceptional case.
- B. The Parties, as expressed to the Court during the initial status conference on May 7, 2008, have differing views of the appropriate schedule for this action. The Parties do, however, agree that presently no more than ten depositions will be necessary on either side. The Parties also agree that disclosures pursuant to Fed.R.Civ.P. 26(a)(1) should be made by May 21, 2008. Other than that agreed date, the Parties' differing schedules are outlined below:

EVENT	Plaintiff's Proposed Date	Defendant's Proposed Date
Close of Fact Discovery	December 19, 2008	July 1, 2009
Parties Exchange of Claim Terms to be Construed	June 20, 2008	October 5, 2008
Parties Exchange of Preliminary Claim Construction	July 11, 2008	October 19, 2008
Joint Claim Construction and Pre-Hearing Statement Due	July 18, 2008	November 7, 2008

Opening Claim Construction Briefs Due	July 25, 2008	November 21, 2008
Responsive Claim construction Briefs Due	August 8, 2008	December 14, 2008
<i>Markman</i> Hearing Ready	August 11, 2008	December 21, 2008
Burden Expert Reports	January 30, 2009	March 1, 2009
Rebuttal Expert Reports	February 27, 2009	May 1, 2009
Close Expert Discovery	March 13, 2009	NONE
Dispositive Motions Due	March 27, 2009	August 5, 2009
Final Pre-trial Order Draft	April 24, 2009	October 1, 2009
Final Pre-trial Order Due	May 15, 2009	November 1, 2009
Trial Ready Date ¹	June 8, 2009	December 1, 2009

3. SETTLEMENT.

- A. Plaintiff made a written settlement demand to Defendant on April 23, 2008.
- B. Defendant responded to Plaintiff's settlement demand on April 30, 2008.

4. CONSENT.

The Parties do not consent unanimously to proceed before a magistrate judge.

¹ The Parties do agree that the trial of this action should take approximately 4-5 trial days.

5. OTHER ISSUES THE PARTIES HAVE AGREED TO.

- A. Where service of any document is required by the Federal Rules of Civil Procedure, any method of service may be used, including electronic mail messaging to all counsel of record, subject to Rules 5(b)(2)(E) and Rule 6(d). The parties acknowledge that service of documents exceeding 5 MB in size may be best accomplished by means other than electronic means.
- B. The parties will meet and confer to determine when privileged logs will be exchanged, and the contents of any privileged logs.

Dated: May 7, 2008

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